

United States District Court
Eastern District of North Carolina
Western Division

FILED

DEC 27 2019

PETER A. MOORE, JR., CLERK
US DISTRICT COURT, EDNC
BY  DEP CLK

Case No. 5:19-CT-3234-FL

Steve M. Tolbert

(In the space above enter the full name(s) of the plaintiff(s).)

Inmate Number 0409607

COMPLAINT

(Pro Se Prisoner)

-against-

DR Hussein

DR Coleman

DR. Urene

DR. Demeko

DR Stewart & John Doe #1, #2

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Section IV. Do not include addresses here.)

Jury Demand?

☒ Yes

☐ No

NOTICE

Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

I. COMPLAINT

Indicate below the federal legal basis for your claim, if known. This form is designed primarily for pro se prisoners challenging the constitutionality of their conditions of confinement, claims which are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a "Bivens" action (against federal defendants).

- ☒ 42 U.S.C. § 1983 (state, county, or municipal defendants)
- ☐ Action under *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971) (federal defendants)
- ☐ Action under Federal Tort Claims Act (United States is the proper defendant; must have presented claim in writing to the appropriate Federal agency and received a notice of final denial of the claim pursuant to 28 U.S.C. § 2401(b))

II. PLAINTIFF INFORMATION

Steve m. Tolbert
Name

0409607
Prisoner ID #

HARNETT Correctional Institution
Place of Detention

P.O. Box 1569
Institutional Address

Lillington
City

NC
State

27546
Zip Code

III. PRISONER STATUS

Indicate whether you are a prisoner or other confined person as follows:

- ☐ Pretrial detainee ☐ State ☐ Federal
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner

IV. DEFENDANT(S) INFORMATION

Please list the following information for each defendant. If the correct information is not provided, it could result in the delay or prevention of service. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant 1:

DR Hussein

Name

Doctor on CallLast Known Address

Current Job Title

552 Prison Camp Rd

Current Work Address

PolktonN.C.28135

City

State

Zip Code

Capacity in which being sued: ☐ Individual ☐ Official ☒ Both

Defendant 2:

DR. Coleman

Name

Doctor on Call - Last Known Address

Current Job Title

1245 Camp Rd

Current Work Address

SalisburyN.C.28752

City

State

Zip Code

Capacity in which being sued: ☐ Individual ☐ Official ☒ Both

Defendant(s) Continued

Defendant 3: DR. Urene
Name
Doctor on Call- Last known address
Current Job Title
600 Amity Park Rd
Current Work Address
Spruce Pine N.C. 28755
City State Zip Code

Capacity in which being sued: ☐ Individual ☐ Official ☒ Both

Defendant 4: DR. Demeko
Name
Doctor on Call- Last known address
Current Job Title
600 Amity Park Rd
Current Work Address
Spruce Pine N.C. 28755
City State Zip Code

Capacity in which being sued: ☐ Individual ☐ Official ☒ Both

Defendant 5: DR. Stewart
Doctor who performed surgery at Central Prison
in Raleigh N.C.

Capacity in which being sued: ☐ Individual ☐ Official ☒ Both

V. STATEMENT OF CLAIM

Place(s) of occurrence: NCDPS, Central Prison, Lanesboro CI, Pasquotank CI, Mountain View CI, Piedmont CI, Avery Mitchell CI

Date(s) of occurrence: December 2012 to Present

State which of your federal constitutional or federal statutory rights have been violated:

Right against cruel and unusual punishment, medical deliberate indifference, failure to mitigate harm

State here briefly the FACTS that support your case. Describe how each defendant was personally involved in the alleged wrongful actions, state whether you were physically injured as a result of those actions, and if so, state your injury and what medical attention was provided to you.

FACTS:

Who
did what to
you?

- 1) IN December of 2012 I placed a sick call into medical while I was processing at Central Prison in Raleigh NC. The sick call was due to the fact that I had a knot that had formed on my big toe joint of my right foot. It was red and very painful at the time and I was having a hard time walking because of the stiffness in my big toe.
- 2) After examining me the nurse said she didn't know what was wrong or what the knot was. She gave me ibuprofen and signed me up to see the doctor.
- 3) In the beginning of 2013 I was transferred to Lanesboro CI where I submitted another sick call due to the deteriorating condition of my big toe joint and the knot that was forming and growing more painful and bigger.
- 4) I saw a DR Hussein who put in an order for x-rays on my foot. I am having difficulty walking normally because my big toe does not bend normally. I am in pain 24 hours a day.

What
happened
to you?

5) X-Rays were taken, an abnormality is seen yet instead of sending me to a foot specialist I was given more ibuprofin and also gel insoles.

6) In the spring of 2013 I transferred to Pasquonank CI where I put in another sick call due to the fact that I'm in so so much pain now and the knot is continuing to grow and becoming more sensitive to the touch. I was seen by a doctor whose name is unknown (John Doe #1). I was once again given ibuprofin for the pain and nothing else. I still have not seen a foot specialist even after the doctors don't know what is wrong with my foot.

When did it
happen to
you?

7) A few month go by and I'm still going to sick calls about the same problem and still not recieving any treatment.

8) At the end of 2013 I transferred to Mountain View CI where I put in numerous sick calls for the same problem. I was seen numerous times by another doctor whose name is also unknown (John Doe #2). I am only recieving tylenol and ibuprofin for the pain and my limping is more pronounced by now. The Knott is continuing to grow and is more painful and I still have not been sent to a foot and bone specialist.

Where did it
happen to
you?

9) In 2014 I transferred to Piedmont CI where I continued to put in sick calls concerning my foot and I am given only cursory treatment. I'm being taken out of work for days at a time due to my inability to walk or stand for long periods of time. I was seen by Dr. Coleman who ordered x-rays but refused to send me to a foot specialist. Still no treatment other than ibuprofin and tylenol.

10) In 2015 I transferred to Avery Mitchell CI where I put in more sick calls but still have not seen a foot specialist. I go thru this for about one year and a half before I am

What was
your
injury?

given tramadol by DR Urene. I took this for pain for about two months and had them take me off the medication due to the fact that it made my stomach hurt and it really wasn't helping with the pain anyway. I have a noticeable limp and I am still in constant pain.

11) I was also seen by Dr. Demeko at Avery Mitchell. The treatment I received from him, x-rays and ibuprofen and Tylenol amounted to no treatment at all. This was in 2015-2016.

12) In December 2017, 4 1/2 - 5 years after I first put in a sick call DR Urene finally sent me to a foot specialist. When I took off my shoe to show the specialist what was wrong, he looked at it and asked "man, how are you even walking?". I told him that I barely made it. My quality of life had diminished to the point that I couldn't and didn't exercise any longer. I was limping and in constant pain. I then signed a paper for emergency surgery which I had five days later.

13) DR Stewart performed the surgery on me at Central Prison in December of 2017. Since then I have been in worse pain than ever before. I can't walk normal, ect. When the surgeon operated he had to place an implant in my toe because the problem I had, Hallux Rigidus, the bone spur had deteriorated my big toe joint to where there was no joint left. The implant is against the bone in my big toe where there is supposed to be a gap in between the implant and the bone. I have to have surgery once again on the same toe, same place in order to separate the implant from pushing on the bone and causing pain. I have been in constant pain since 2012 where if I had been treated properly

Continued on Attached Pages

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when the symptoms first showed up I would never have had to go through all those years of pain.

- 14) The doctors treatment or lack there of was the proximate cause of the claimed constitutional violation which happened over the course of several years which caused plaintiff much pain, suffering and emotional distress which continues to this day

VI. ADMINISTRATIVE PROCEDURES

WARNING: Prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions. 42 U.S.C. § 1997e(a). Your case may be dismissed if you have not exhausted your administrative remedies.

Have you filed a grievance concerning the facts relating to this complaint? ☒ Yes ☐ No

If no, explain why not:

Is the grievance process completed? ☒ Yes ☐ No

If no, explain why not:

VII. RELIEF

State briefly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

- A. Declaratory Relief
 - B. Compensatory damages in the amount of greater than \$10,000
 - C. Punitive Damages as seen fit
 - D. Any other relief deemed just and proper
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VIII. PRISONER'S LITIGATION HISTORY

The “three strikes rule” bars a prisoner from bringing a civil action or an appeal in forma pauperis in federal court if that prisoner has “on three or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. §1915(g).

Have you brought any other lawsuits in state or federal court while a prisoner?

☐ Yes ☒ No

If yes, how many? _____

Number each different lawsuit below and include the following:

- Name of case (including defendants' names), court, and docket number
- Nature of claim made
- How did it end? (For example, if it was dismissed, appealed, or is still pending, explain below.)

[illegible]

IX. PLAINTIFF'S DECLARATION AND WARNING

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending or modifying existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint and provide prison identification number and prison address.

12-19-19
Dated

Steve Tolbert
Plaintiff's Signature

Steve M. Tolbert
Printed Name

0409607
Prison Identification #

P.O. Box 1569 Lillington NC 27546
Prison Address City State Zip Code